

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

THE CHICAGO BEARS FOOTBALL
CLUB, INC.

Plaintiff,

vs.

AFFILIATED FM INSURANCE
COMPANY,

Defendant.

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C.A. No. _____

ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff, The Chicago Bears Football Club, Inc. (hereafter “Plaintiff” or “Insured”), files this Complaint for damages and declaratory judgment against Defendant, Affiliated FM Insurance Company (“AFM”), alleging the following:

I. INTRODUCTION

1. This action for breach of contract, declaratory judgment, and bad faith arises out of AFM’s failure to comply with its contractual obligations and provide coverage for Plaintiff’s claim under an “all risks” insurance policy, Policy Number ES025, sold by AFM to Plaintiff (the “Policy”).

2. Plaintiff conducts business at Soldier Field, Halas Hall (the Training Facility”), and the Chicago Bears’ downtown office (the “Downtown Office”) (collectively, the “Covered Property”) in Illinois. Soldier Field’s history dates back to 1919, and it is highly regarded as one of Chicago’s most famous landmarks today. The stadium seats over 61,000 spectators and has hosted world-class sporting events and entertainment events, including National Football League (“NFL”) games for the Chicago Bears, college football games, Chicago Fire soccer games, youth football games, concerts, shows, tours, and other events. Moreover,

Soldier Field offers a variety of unique spaces that people can use for both public and private events, including, without limitation, corporate events, seminars, and parties.

3. The Training Facility is a forty-one (41) acre campus that encompasses all outdoor football fields, indoor football operations and training facilities, an indoor football field, office building, and parking lots. The Training Facility consists of a large two-story 200,000 square feet building with offices, conference rooms, a dining hall, a weight room, locker rooms, and other working areas for all employees, including players, coaches, and staff. The Training Facility also includes: (a) a large event center for entertaining business guests and/or hosting large events for up to 250 people (“PNC Event Center”); (b) two practice viewing suites which allow business partners and invited guests to watch practices, off-season workouts and mini-camp (“Practice Viewing Suites”); (c) a state of the art broadcast studio for events and to produce Chicago Bears television broadcasts and related content (“TV Studio”); (d) four (4) outdoor football fields for team practices, workouts and training camp (“Fields”); and (e) a large indoor practice facility to hold team practices and workouts, as well as a variety of events for business partners and invited guests (“Walter Payton Center”). The Training Facility is used by the team for all football operations activities, including all off-season workouts, team meetings, practices, athletic training and all related medical, rehabilitation, and recovery services, food services, sports science and nutrition, scouting and player evaluations, football analytics and related technology, football video production services, equipment department services, and player engagement (“Football Operations Activities”). The Training Facility serves as the Plaintiff’s primary headquarters, with offices, conference rooms, and meeting and dining areas for all Plaintiff’s employees, and is used for a variety of business purposes: including (a) hosting large corporate and community relations events in the PNC Event Center, Practice Viewing Suites and the Walter Payton Center; (b) producing

television programs and other related content in the TV studio; (c) hosting the media and holding press conferences; and (d) hosting public events such as Training Camp (“Business Operations Activities”). Further, Plaintiff rents out spaces of the Training Facility to various organizations to hold and/or host corporate events.

4. In addition, Plaintiff utilizes the Downtown Office as a satellite office, with conference rooms, meeting areas, and entertainment and event space sales center for approximately 40 employees in the corporate partnerships, executive suite sales, suites and events and experiences departments (“Downtown Office Uses”).

5. The Covered Property’s existence, however, is now threatened by SARS-CoV-2, sometimes called “Coronavirus” or by one of the names of the disease that it causes and that spreads it: “COVID-19.” SARS-CoV-2 is referred to as COVID-19 herein.

6. Due to COVID-19, Plaintiff’s Covered Property has suffered “direct physical loss or damage”—under the plain and ordinary meaning of that term.

7. Once able to freely welcome visitors from all over the world and pack fans into Soldier Field to enjoy sporting events, entertainment events, and private events, Plaintiff was forced to close the stadium entirely for approximately fifteen (15) months. Games, concerts, parties, tours, and other events previously scheduled at Soldier Field and the Training Facility were cancelled or postponed due to COVID-19—however, even the events that have merely been *postponed* and not *cancelled* were not rescheduled for any time during 2020. In addition, as a result of COVID-19, Plaintiff was unable to use the Training Facility for its players and coaches to study, work out, train, practice and conduct meetings in preparation for football games for a considerable period of time during 2020. Likewise, Plaintiff had to cancel all events at the Training Facility including training camp, events in the PNC Center, Practice Viewing Suites and Walter Payton

Center, and was forced to close the Training Facility for a considerable period of time. No fans or spectators were allowed inside the Training Facility during that time. Further, most employees were unable to use the Training Facility and Downtown Office for any of Plaintiff's Business Operations Activities during 2020.

8. Among other things, Plaintiff was forced to cancel highly anticipated events, make significant structural alterations, changes and/or repairs to its Covered Property, and completely restrict fans from entering the stadium due to COVID-19 and resultant closure orders for approximately 15 months. To do anything else would have led to the emergence or reemergence of COVID-19 at the Covered Property.

9. Even throughout the 2021 football season, Plaintiff was still unable to utilize the Covered Property in the way it had been used prior to the outbreak of COVID-19. For example, certain events required guests to provide proof of vaccination or a negative COVID-19 test result, and to wear masks or face coverings, and some areas reopened in a limited capacity with fewer days open and for a shorter period of time due to COVID-19. Plaintiff is also required to comply with strict COVID-19 related protocols provided by the NFL, which continues to impose restrictions on the use and availability of Plaintiff's Covered Property.

10. These losses are "direct." Plaintiff is not asking its insurer to reimburse it after someone obtained a judgment against Plaintiff for getting them sick. That might be an indirect loss. Rather, Plaintiff directly lost the functionality of its Covered Property for business purposes due to COVID-19 because of the outbreak and presence of the virus, and is asking the insurer to pay for its loss of business income occasioned directly by being unable to use its Covered Property. Moreover, the losses are "direct" because COVID-19 was at the Covered Property and close to it in proximity, and in common, plain language, COVID-19 would be understood to be the cause of

Plaintiff's losses. COVID-19 was not only a substantial cause of Plaintiff's losses, it was the predominant or immediate cause of those losses.

11. These losses are "physical." Plaintiff has been and is unable to use the Covered Property in the manner in which it had previously used it prior to March 2020.¹ The Covered Property lost at least part of its functionality, and most of its ability to generate revenue for much of 2020. The probability of illness prevented the use of the spaces in their normal way in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable. Moreover, the SARS-CoV-2 virus that causes COVID-19 is physical—it can be seen, counted, measured, and destroyed; it replicates itself and destroys other cells and organisms. Importantly, it can exist in the air and on surfaces for indeterminate periods of time and be transferred from the air and surfaces into human bodies. The presence of the virus in a facility is a *physical* presence, and it is a damaging one.

12. These losses are "losses." Plaintiff has lost the use and function of physical spaces for the purpose of generating business income. The losses include the diminishment of the physical space in the building. What once could hold tens of thousands of raucous and energetic fans could hold no fans for all of 2020, and what once could hold professional athletes training to perfect their skills could later only hold limited training athletes in the same space at the same time.

13. These losses constitute "damage." The SARS-CoV-2 virus, a physical object, has been present in and around Plaintiff's Covered Property, impairing its function for its ordinary and

¹ Note, however, that Plaintiff is not seeking recovery for its loss of use. Rather, Plaintiff is seeking coverage for its loss of business income. As an example that drives home the difference, some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms' business income has increased and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a "loss of use" claim. But the law firm would have no loss of *business income* claim. Here, Plaintiff's businesses have stalled because of the impairment of its business space, and Plaintiff is seeking the loss of business income under the business interruption coverage of its property insurance Policy.

intended use, forcing its closure, requiring steps to be taken to physically restore the Covered Property to a usable state, and altering the structure of ambient air and property surfaces:

- a. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is a betacoronavirus that is genetically related to several other zoonotic coronaviruses, including SARS-CoV-1, the etiological agent of SARS. SARS-CoV-2 causes coronavirus disease 2019 (COVID-19) in humans. SARS-CoV-2 has glycoprotein “spikes” that are able to bind to human angiotensin converting enzyme 2 (ACE-2) receptors, which is present on human respiratory epithelial cells. After binding to ACE-2, the virus is able to enter the cells and make copies of itself, which are then released. These released infectious viral particles are then expelled in respiratory secretions as respiratory droplets into a multiphase, turbulent gas cloud during breathing, coughing, sneezing, talking, and singing. There are large and small respiratory droplets within the cloud. Large respiratory droplets can infect other people either directly, through direct contact with respiratory mucosal surfaces, or indirectly, by contaminating surfaces which are then touched by another person who subsequently touches her or his mouth, nose, or eyes. The small droplets remain in the air as an aerosol, which can remain suspended in the air for hours, travel prolonged distances indoors along air currents induced by the HVAC system, and travel from room to room, infecting people directly through contact with, and inhalation of, the aerosol. Particles from the aerosol can also contaminate surfaces.

- b. Because SARS-CoV-2 spread is logarithmic, a key purpose of government closure orders for non-essential medical procedures that require personal protective equipment (PPE) is to prevent the spread of SARS-CoV-2. In the absence of closure initially, people would have been infected with SARS-CoV-2 present on a premise, causing contamination of air and physical surfaces with infectious SARS-CoV-2 particles, leading to virus transmission and additional cases of COVID-19.
- c. The virus is indirectly transmitted when a host touches an infested object or surface that is infested with the SARS-CoV-2 virus (i.e., fomite transmission). The virus can survive on hard and soft surfaces for a period of time ranging from a few hours to a few days.
- d. Aerosol transmission, particularly during aerosol generating procedures, such as fans talking and cheering, is believed to be a common mode of transmission in public settings. If a person is infected with SARS-CoV-2, whether symptomatic or asymptomatic, and goes to a game or concert, infectious viral particles will be aerosolized into the air. Infection clusters suggest that aerosol, droplet and fomite transmission explain SARS-CoV-2 transmission amongst humans.
- e. Nonetheless, the virus, while imperceptible to the human eye without enhancement, is undeniably present in the air, and on objects and surfaces where infected humans congregate. The object and surface and space are, essentially, rendered useless, in that they should not be utilized while virus is present.

- f. The virus cannot be observed by the human eye without enhancement. No one can see the virus in the air, on one's hands, or on a surface. This, of course, makes it difficult to eliminate the virus, or eradicate its transmission, from air or surfaces. The presence of the virus is only observed through the infection rate.
- g. Merely cleaning surfaces may reduce but does not altogether eliminate the risk of transmission. There may be surfaces with residual infectious virus, and aerosolized infectious particles. In other words, disinfection may temporarily eliminate a virus that was present prior to disinfection; however, a space may remain contaminated if an aerosol is present, and immediately become contaminated thereafter if another infected person is present in the area.
- h. The presence of the virus, whether circulating or stagnant, has changed the object, surface or premises, in that it has become dangerous to handle and/or enter, and cannot be used. Its use can only be restored with remedial action and sufficient time for the contaminated air to be evacuated, as suggested by the CDC and other infectious disease experts.
- i. The virus, observable only through microscopy and reflected by the public transmission rates, does physically exist and will survive in the air and on hard and soft surfaces. The virus can remain viable and infectious in aerosols for hours and on surfaces up to days. The virus may be inhaled from aerosols or spread to hands from a contaminated surface and then to the nose or mouth, causing infection. Notably, clearance of aerosols or

disinfection of a contaminated surface is temporary and will easily become contaminated again when the virus is reintroduced by another infected person, and this contamination will provide a constant modality for infection to people.

- j. The virus' presence in a community, evidenced by infection rates, means that live virus has been transferred in the air and to objects and surfaces. When aerosolized or an object or surface contains live virus, the virus is physically present in the air and on surfaces and objects, but imperceptible to the human eye. Nevertheless, the air, objects and surfaces should not be used as they would have been in the past. The transmission of the virus can occur through breathing, aerosol generating procedures, or touching surfaces or objects contaminated with virus from an infected person.
- k. Aerosol, droplet, and fomite transmission are the basis for masking, eye protection, use of gowns and gloves in the healthcare setting, social distancing, handwashing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity and/or occupancy limits, and other measures implemented in various executive orders. The virus is physically present in the community, including in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to constant reinfestation of air and surface areas, it is simply impossible to entirely eradicate the virus from indoor and enclosed spaces and such surfaces if there continue to be unmasked people in the area.

- l. Reducing capacity in public settings is one way to reduce the presence of virus on objects and surfaces and, therefore, reduce the risk of transmission, especially during times of rising infection rates. Wearing masks reduces, but does not eliminate, the likelihood of virus being aerosolized and transferred to objects and hard surfaces.
- m. Even with cleaning and disinfecting, the presence of virus on objects and surfaces, though reduced, cannot be reliably eliminated because these surfaces will continue to become infected. The only way to fully ensure the absence of virus on objects and surfaces is to prevent access to an environment, especially an indoor or enclosed environment with full capacity.

14. Despite the fact that Plaintiff entered into an insurance contract with AFM to cover it from “all risks,” including that of business interruption and related losses due to physical loss or damage to property, AFM has reneged on its obligations. AFM has relied on inapplicable exclusions and its own internal scheme to limit or altogether deny Plaintiff from the recovery to which it is entitled. Plaintiff has paid its premium in full and has relied on the insurance Policy as a shield against unforeseen loss or damage and resulting loss of income. Yet instead of following through on its end of the bargain, AFM has failed to honor its duties under the Policy.

II. THE PARTIES

15. Plaintiff The Chicago Bears Football Club, Inc. is a Delaware corporation with a principal place of business at 1920 Football Drive, Lake Forest, Illinois 60045.

16. Defendant Affiliated FM Insurance Company is incorporated under the laws of Rhode Island with a principal place of business at 270 Central Avenue, Johnston, Rhode Island

02919. It is authorized to write, sell, and issue insurance policies providing property and business income coverage nationwide. At all times material hereto, AFM conducted and transacted business through the selling and issuing of insurance policies nationwide, including, but not limited to, selling and issuing property and business coverage to Plaintiff.

III. JURISDICTION AND VENUE

17. This court has jurisdiction pursuant to the provisions of Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L. § 9-30-2.

18. This matter is subject to the jurisdiction of this Court, as Defendant is a resident of the State of Rhode Island and does business in the State of Rhode Island, and the value of the Plaintiff's claim exceeds the jurisdictional requirement.

19. This Court has personal jurisdiction over Defendant because Defendant does business within the State of Rhode Island.

20. Venue is proper in this county as the Defendant was, at all relevant times, a resident of Providence County, in the State of Rhode Island.

IV. FACTUAL BACKGROUND

21. The Covered Property, specifically Soldier Field and the Training Facility, are world-class sports and entertainment facilities. Soldier Field can seat over 61,000 people, and it hosts NFL games for the Chicago Bears, MLS games for the Chicago Fire, concerts, tours, and other sporting and entertainment events. It also offers a variety of spaces that people can use for public and private events, such as corporate meetings, seminars, and parties. As set forth in paragraph 3 above, the Training Facility is used for all Football Operations and Business Operations Activities. The Covered Property also includes the Downtown Office, which is used for all Downtown Office Uses.

22. In fact, all concerts, parties, tours, and other events previously scheduled at Soldier Field and the Training Facility were cancelled or postponed in mid-March 2020 due to COVID-19. None of these events were rescheduled for any time during 2020. Plaintiff was unable to use the Training Facility for any Football Operations Activities for considerable period of time during 2020. Since March of 2020 through mid-2021, all Business Operations Activities were cancelled, and with the exception of a limited number of essential workers, all business operations employees were not permitted to use the Training Facility or Downtown Office and were required to work remotely. No fans, spectators or guests were allowed inside Soldier Field and the Training Facility during that time. In or around July/August 2021, Plaintiff's Covered Property slowly reopened in a limited capacity and for a shorter period of time due to COVID-19. Plaintiff, its staff, the Bears' team members, and any guests were still required to comply with strict COVID-19 rules and regulations, such as wearing masks or face coverings, providing proof of vaccination, or providing a negative COVID-19 test result.

23. Plaintiff acquired "all-risk" property coverage to protect itself in the event that the Covered Property suddenly had to suspend operations for reasons outside of its control or if Plaintiff had to act in order to prevent further property damage.

24. AFM is an insurance company that sold the "all-risk" insurance policy, under Policy Number ES025, to Plaintiff covering "all risks of physical loss or damage, except as hereinafter excluded². . ." See Policy No. ES025, attached as Exhibit 1 at pg. 11.

25. AFM did not exclude or limit coverage for losses from the spread of virus in the Policy. Indeed, the Policy does not include, and is not subject to, any exclusion for losses caused

² Although the AFM Policy includes some coverage exclusions, none of the exclusions are applicable to Plaintiff's claim.

by the spread of viruses or communicable diseases. Thus, losses due to COVID-19 are a “Covered Cause of Loss” under the Policy.

26. With a policy period of June 30, 2019 through June 30, 2020, the Policy covers the Covered Property, namely, Soldier Field, located at 1410 South Museum Campus Drive, Chicago, Illinois 60605, the Training Facility, located at 1920 Football Drive, Lake Forest, Illinois 60045, and the Downtown Office, located at 123 North Wacker Drive, Chicago, Illinois 60606. *See id.* at pg. 10-11. The Policy also provides up to \$185,000,000 in coverage for property damage per occurrence, which includes business interruption losses. *See id.* at pg. 75.

27. Specifically, the Policy provides coverage to Plaintiff for Business Interruption losses occurring as a result of physical loss or damage of the type insured under the Policy. *See id.* at pg. 39.

28. The Policy provides Civil or Military Authority coverage for business interruption loss resulting from the prohibition of access to covered property. *See id.* at pg. 44-45.

29. The Policy also provides coverage for losses incurred due to the necessary interruption of the Plaintiff’s businesses due to partial or total prevention of ingress or egress from Plaintiff’s insured Property. *See id.* at pg. 47.

30. In exchange for AFM’s agreement to take on Plaintiff’s risk of loss, Plaintiff paid \$233,798 in premium for the Policy. Plaintiff has paid or tendered all consideration required under the Policy.

31. Due to the actual presence of COVID-19, the Covered Property suffered direct physical loss or damage. Due to COVID-19, the Covered Property has become unsafe for its intended purpose and thus suffered physical loss or damage. The business functions of the Covered Property were impaired as a result. If Plaintiff continued to simply conduct business as it normally

would have in the past prior to COVID-19, the virus would manifest, and guests, employees, and other visitors to the Covered Property would risk infection and serious illness or death. This is not a non-physical or remote loss such as one occasioned by a breach of contract, loss of a market, or the imposition of a governmental penalty. Instead, it is a direct physical loss because of the changed physical environment. In its condition from March 2020 through 2021, the Covered Property was not functional for its usual, normal business purpose.

32. Moreover, the presence of virus constitutes physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, The Insurance Services Office (“ISO”), circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

33. The presence of virus or disease has resulted in physical damage to the Covered Property in that manner in this case, including structural alteration of the ambient air and the surfaces of the properties, along with a loss of functionality and the diminishment of functional space.

34. Losses caused by COVID-19 and the related orders issued by civil authorities triggered the Business Interruption, Communicable Disease-Property Damage, Communicable Disease-Business Interruption, Attraction Property, Extra Expense, Civil Authority,

Ingress/Egress, Supply Chain, Rental Income, and Preservation of Property provisions of the Policy. Plaintiff also reasonably and necessarily incurred expenses to reduce its Business Interruption losses.

A. COVID-19 Is A Highly Contagious and Deadly Communicable Disease

35. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus, is a deadly communicable disease that has already infected over 78 million people in the United States and killed more than 944,000 Americans.³

36. The virus that causes COVID-19 most commonly spreads between people who are in close contact with one another (within about 6 feet, or 2 arm lengths). It spreads through respiratory droplets or small particles, such as those in aerosols, produced when an infected person coughs, sneezes, sings, talks, or breathes. These particles can be inhaled into the nose, mouth, airways, and lungs and cause infection. This is thought to be the main way the virus spreads.

37. Per the CDC, “COVID-19 spreads when an infected person breathes out droplets and very small particles that contain the virus. These droplets and particles can be breathed in by other people or land on their eyes, noses, or mouth. In some circumstances, they may contaminate surfaces they touch. People who are closer than 6 feet from the infected person are most likely to get infected. COVID-19 is spread in three main ways: Breathing in air when close to an infected person who is exhaling small droplets and particles that contain the virus; Having these small droplets and particles that contain virus land on the eyes, nose, or mouth, especially through splashes and sprays like a cough or sneeze; Touching eyes, nose, or mouth with hands that have the virus on them.”⁴

³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed February 28, 2022).

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last viewed February 28, 2022).

38. Droplets can also land on surfaces and objects and be transferred by touch. A person may get COVID-19 by touching the surface or object that has the virus on it and then touching their own mouth, nose, or eyes. A scientific study investigating the stability of COVID-19 in different environmental conditions found that, following COVID-19 contamination, the virus could be detected hours later for tissues and paper, days later for wood, cloth and glass.⁵ COVID-19 also remains active on plastic and stainless steel surfaces for up to three days, on cardboard for 24 hours, on copper for four hours, and is detectable in aerosols for up to three hours.⁶

39. All of these materials are used by Plaintiff and otherwise present in the Covered Property.

40. The time between exposure to the coronavirus and first symptoms, otherwise known as the incubation period, for COVID-19 can last up to 14 days.⁷ Some COVID-19 patients show symptoms, and some are asymptomatic. Even asymptomatic persons can transmit COVID-19 for an extended period of time, thought to be even longer than 14 days.⁸ Those people who eventually show symptoms can also spread the disease even in their pre-symptomatic state.⁹

41. Research has also indicated that the coronavirus can spread through the air. For example, airborne viral particles are known to have spread into a facility's heating and ventilation ("HVAC") system, leading to transmission of the coronavirus from person to person. One study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of

⁵ See Alex W.H. Chin, et al., Stability of SARS-CoV-2 in different environmental conditions, *The Lancet Microbe* (April 2, 2020), [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

⁶ See <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#:~:text=The%20incubation%20period%20for%20COVID,CoV%2D2%20infection>. (last viewed January 18, 2022).

⁸ See <https://www.acpjournals.org/doi/10.7326/M20-3012>.

⁹ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2.

COVID-19 patients. This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.¹⁰

42. The Environmental Protection Agency ("EPA") has previously compiled several studies reflecting "epidemiological evidence suggestive of [coronavirus] transmission through aerosol." Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.¹¹

43. Accordingly, COVID-19 causes physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 has caused such physical loss and damage to Plaintiff's covered property, as described further below.

44. First, respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, furniture) unsafe.

45. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5 μm) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

¹⁰ See <https://www.researchsquare.com/article/rs-34643/v1>.

¹¹ See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

46. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not theoretical, intangible, or incorporeal, but rather are dangerous physical substances that have a material, tangible existence.

47. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become a part of those surfaces and materials, converting the surfaces and materials to fomites. This represents a physical change in the affected surface or material, which constitutes physical loss and damage.

48. The presence of COVID-19 within a facility causes physical loss and damage by necessitating remedial measures that include without limitation extensive cleaning and disinfecting, repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of cases of COVID-19 and the coronavirus on-site.

49. The presence of cases of COVID-19 within a facility causes physical loss and damage by transforming the facility from property that is usable and safe for humans into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

50. In addition, the presence of COVID-19 on property creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the facility by touching a doorknob or gripping the arms of a stadium chair, will carry those droplets on their hands and deposit them elsewhere in the facility, causing additional damage and loss.

B. Federal, State, and Local Governments Issue Civil Authority Orders Because of COVID-19

51. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak as a pandemic.¹² On March 13, 2020, former President Donald Trump declared a national emergency due to the outbreak in the United States.¹³

52. The threat and presence of COVID-19 causes direct physical loss or damage to property. In response to the direct physical loss or damage to property due to COVID-19, civil authorities across the United States issued orders requiring the closure of numerous business and/or suspending or restricting business activities at a wide range of establishments (“Closure Orders”), including civil authorities with jurisdiction over business activities at the Covered Property.

53. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing Closure Orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)¹⁴ (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C. Emergency Exec. Order No. 103 at 1 (March 25, 2020)¹⁵ (“actions taken to prevent the spread of COVID-19 “have led to property loss and damage”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)¹⁶ (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer

¹² *See* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

¹³ *See* <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

¹⁴ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>.

¹⁵ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>.

¹⁶ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf.

(Mar. 18, 2020)¹⁷ (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)¹⁸ (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)¹⁹ (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)²⁰ (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)²¹ (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)²² (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)²³ (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8

¹⁷ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>.

¹⁸ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf.

¹⁹ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>.

²⁰ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>.

²¹ https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/safe_rathomeorder.pdf.

²² <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>.

²³ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf.

(effective Mar. 26, 2020)²⁴ (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

54. In Illinois, civil authorities issued several Closure Orders with a variety of restrictions severely impacting Plaintiff’s business activities, including but not limited to the following:

55. On March 9, 2020, the Governor of Illinois, JB Pritzker, declared a State of Emergency in the State of Illinois due to COVID-19.²⁵

56. Effective March 13, 2020, Governor Pritzker issued an executive order prohibiting all public and private gatherings of 1,000 or more people, including concerts, festivals, and sporting events.²⁶

57. On March 16, 2020, Governor Pritzker issued an executive order closing all businesses that offer food or beverages for on-site consumption, including restaurants and bars, to close, and prohibiting all public and private gatherings of 50 or more people.²⁷

58. On March 20, 2020, Governor Pritzker issued an executive order requiring all individuals to stay at home or place of residence except to engage in “essential” activities, ceasing all non-essential businesses and operations in the state of Illinois, and prohibiting all public and private gatherings of any number of people.²⁸ Further, all places of public amusement, whether indoors or outdoors, including but not limited to, carnivals, concert and music halls, and theme parks, were required to close.²⁹

²⁴https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL.

²⁵ See <https://www2.illinois.gov/sites/gov/Documents/CoronavirusDisasterProc-3-12-2020.pdf>.

²⁶ <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-04.aspx>.

²⁷ <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-07.aspx>.

²⁸ <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>.

²⁹ See *id.*

59. The “stay at home” order was amended and extended several times.³⁰ However, none of Plaintiff’s businesses were deemed to be “essential” under the executive orders.³¹ As a result, Plaintiff’s Covered Property had to remain closed.

60. Since then, the state of Illinois began reopening the economy per the guidelines provided by Governor Pritzker and the Illinois Department of Public Health; however, individuals were still required to wear masks in all indoor public settings until March 1, 2022. Further, the NFL continues to require football teams, like Plaintiff, to comply with strict COVID-19 related protocols.

C. Plaintiff’s Businesses Interrupted and Events Cancelled Due to the Actual Presence of COVID-19

61. The actual presence of COVID-19 caused direct physical loss or damage to Plaintiff’s Covered Property, by: (i) causing direct physical loss or damage to the Covered Property; (ii) denying use of and damaging the Covered Property; (iii) requiring physical repair and/or alterations to the Covered Property; and (iv) causing a necessary suspension of operations during a period of liability.

62. At the time of this filing, there have been at least 70 positive COVID-19 tests of individuals who were physically present at the Covered Property.

63. Because of the spread or presence of COVID-19, the functional spaces in the Covered Property have been diminished. For example, the stadium seats, luxury suites, and concession stands at Soldier Field lost their normal functionality, and the spaces could not be used from March 2020 until approximately July/August 2021. Likewise, the workspaces and offices at the

³⁰ <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18.aspx>; *see also* <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18.aspx>.

³¹ *See id.*

Downtown Office lost their normal functionality and the space could not be used from March 2020 until approximately July/August 2021 due to the spread of presence of COVID-19. Similarly, many of the spaces at the Training Facility lost their normal functionality and many areas were left unusable for approximately 15 months due to the spread or presence of COVID-19.

64. Since March 2020, Plaintiff was unable to host sporting events with fans and other entertainment events. No fans or spectators entered the Covered Property for approximately 15 months, from March 2020 to approximately July/August 2021.

65. Almost all business operations of Plaintiff's, most of which involve large gatherings at the insured Covered Property, were initially canceled and none have resumed in the same manner as they were operating before COVID-19.

66. All of Plaintiff's business operations have been and continue to be severely negatively impacted.

67. To date, Plaintiff's losses exceed tens of millions of dollars in time element/business interruption losses and various costs to remediate the Covered Property and to ensure the health and safety of staff members, employees, NFL players, and coaches due to COVID-19 and related government Closure Orders, and these losses continue to increase. These losses also include, but are not limited to, unsold or refunded tickets for Chicago Bears NFL football games, lost revenue for NFL-related sponsorships and sporting events, and costs related to testing NFL players, coaches, and employees specifically for COVID-19, and increased costs for professional cleaning services.

68. Moreover, the presence of COVID-19 at Plaintiff's Covered Property has caused "direct physical loss of or damage" to Plaintiff's Covered Property and is further evidenced by the

numerous recent structural alterations made to Soldier Field, Training Facility, and the Downtown Office.

69. For instance, plexiglass partitions, protection shields, and/or other barriers were installed and bolted in the locker rooms in the Training Facility and Soldier Field. Several lockers and walls were completely removed from locker rooms to permit spacing for social distancing. New cables and electrical wiring were installed to facilitate and permit virtual meetings. Manual doors were completely removed and motion sensor doors were permanently installed.

70. Thus, there have been many obvious structural alterations, changes and/or repairs made to the Covered Property and the operations of Plaintiff in order to continue its business after experiencing direct property damage, which was caused by COVID-19, and to avoid imminent threat of further property damage. Had fans or visitors been permitted to enter the Covered Property during the 2020 season, Plaintiff would have implemented additional operational changes and structural alterations, such as remodeling concession stands, eliminating stands for condiments for food, and/or erecting additional hand sanitizer stands throughout the stadium, and incurred increased costs and expenses. In fact, since operations have reopened in or around July/August 2021, Plaintiff has installed devices to allow mobile-only ticketing touchless points of sale at concession stands and retail locations, hand sanitizing stations, and numerous signs promoting hygiene practices throughout the Covered Property.

71. COVID-19 has rendered Plaintiff's Covered Property unfit for its intended business functions. In its condition prior to March 2020 and all of the subsequent structural alterations, Plaintiff's Covered Property was not functional for its business purposes because of the changed physical environment due to COVID-19. COVID-19 also presented an imminent threat of

immediate damage or loss to Plaintiff's Covered Property, forcing Plaintiff to take costly action to prevent further damage or loss.

72. The Closure Orders prohibited access to Plaintiff's Covered Property, and the area immediately surrounding the insured Covered Property, in response to dangerous physical conditions resulting from a Covered Cause of Loss causing damage to property other than the Covered Property.

73. As a result of the actual presence of COVID-19 and the Closure Orders, Plaintiff suffered Business Interruption losses and incurred Extra Expense.

D. Plaintiff's "All Risks" Policy Covers Plaintiff's Claim

74. As discussed above, the Policy issued by AFM covers property at the insured locations "against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded³². . ." (emphasis in original). *See* Exhibit 1 at pg. 11.

75. Plaintiff's insured locations under the Policy include the Covered Property, namely, Soldier Field, located at 1410 South Museum Campus Drive, Chicago, Illinois 60605, the Training Facility, located at 1920 Football Drive, Lake Forest, Illinois 60045, and the Downtown Office, located at 123 North Wacker Drive, Chicago, Illinois 60606. *See id.* at pg. 10-11.

76. AFM drafted the Policy.

77. The Policy explicitly recognizes that physical loss or damage to property can result from communicable disease.

78. Under the "Communicable Disease-Property Damage" coverage section of the Policy, the Policy expressly covers, among other things, "the reasonable and necessary costs

³² None of the exclusions in the Policy apply to Plaintiff's claim.

incurred . . . for the: 1) cleanup, removal and disposal of . . . presence of communicable disease from insured property[.]” *See id.* at pg. 27.

79. Under the “Communicable Disease-Business Interruption” coverage section of the Policy, the Policy expressly covers, among other things, “the Business Interruption Coverage loss incurred during the Period of Liability . . . with such presence of communicable disease.” *See id.* at pg. 45.

80. Because the Policy provides for the “cleanup, removal, and disposal of . . . communicable disease” and “the Business Interruption Coverage loss incurred” due to the “presence of communicable disease,” the Policy explicitly recognizes that physical loss or damage to property can result from communicable disease.

81. The fact that the Policy expressly covers *remediation* of the damage caused by communicable disease means that the physical damage to the property caused by communicable disease is “physical damage of the type insured” under the Policy.

1. COVID-19 Triggered Coverage Under the “All Risks” Policy

82. Coverage under the Policy is triggered due to the actual presence of COVID-19 at the Covered Property and the ongoing threat of immediately impending COVID-19 and resulting loss or damage.

83. Furthermore, the presence of COVID-19 on property within 1,000 feet of the Covered Property triggered coverage under the Policy.

84. COVID-19 has caused (and continues to cause) direct physical loss and physical damage, as described above, to property, including Plaintiff’s Covered Property.

85. Additionally, COVID-19 has caused (and continues to cause) Plaintiff to experience covered business interruption losses.

86. Due to the losses covered by the Policy, Plaintiff submitted a claim to AFM. AFM has failed to acknowledge its responsibility to cover and pay Plaintiff's claim.

87. AFM's bad faith conduct stems from a systemic company-wide policy designed to refuse or minimize warranted payments to its insureds for COVID-19 related claims, as described in more detail below.

2. Multiple Coverages Are Triggered Under the "All Risks" Policy

88. Plaintiff's claim triggered not only the Policy's "all risks" coverages, it also triggered numerous coverage "extensions" in the Policy. These include, but are not limited to, the following coverages:

a. AFM Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policy's Business Interruption Coverage

89. Under the Policy, Plaintiff is covered for business interruption losses.

90. Due to the spread and actual presence of COVID-19 at the Covered Property, Plaintiff has suffered business interruption losses as a direct result of physical loss and damage that is insured by the Policy as described above.

91. According to the Policy, Plaintiff is covered from the date of the loss until the Covered Property can be made ready for normal operations.

b. AFM Should Compensate Plaintiff for Its Reasonable and Necessary Costs Incurred to Temporarily Protect or Preserve Its Property Because COVID-19 Triggered the Policy's Protection and Preservation of Property Additional Coverage

92. Due to the actual presence and spread of COVID-19 causing direct physical loss or damage, and the ongoing threat of immediately impending physical loss or damage (as described above) at the Covered Property, Plaintiff incurred costs to temporarily protect or preserve its insured property, including all costs associated with having to close down the Covered Property

and the costs to make it safe. The Policy provides coverage for such costs to the extent they are reasonable and necessary.

93. Such costs were reasonably necessary because incurring the costs prevented further insured physical loss or damage.

94. Accordingly, under the Policy, AFM must compensate Plaintiff for those costs.

c. AFM Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policy's Civil Authority Coverage

95. Due to the actual physical presence of COVID-19 at and nearby the Covered Property, Illinois' governor and other local leaders issued orders which limited, restricted, and/or prohibited access to it.

96. Because of this, Plaintiff has suffered actual losses and incurred extra expenses. The Policy affords coverage to Plaintiff due to the civil authority orders which have caused substantial losses and extra expenses to Plaintiff.

d. AFM Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policy's Ingress/Egress Coverage

97. Due to COVID-19 and the physical loss and damage of COVID-19 at other nearby properties, Plaintiff's businesses have been interrupted because of the total or partial prevention of ingress or egress to and from the Covered Property.

98. The business interruption losses caused by the prevention of ingress or egress to and from the Covered Property is covered under the Policy.

e. AFM Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policy's Extra Expense Coverage

99. The actual physical presence and spread of COVID-19 at the Covered Property has caused Plaintiff to incur reasonable and necessary extra expenses in an effort to continue as nearly normal as practicable the conduct of Plaintiff's businesses. These expenses are in addition to what

Plaintiff would have normally incurred in conducting its businesses without the presence of COVID-19.

100. The Policy covers such reasonable and necessary extra expenses.

f. AFM Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policy's Attraction Property Coverage

101. The Policy provides coverage for actual loss sustained and extra expense incurred resulting from physical loss or damage to property of the type insured that is within one mile of and attracts business to the Covered Property.

102. Plaintiff has suffered losses as a result of physical loss or damage to the attraction properties of the same type as described above with respect to Plaintiff's Covered Property within one mile of it.

g. AFM Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the AFM Policy's Communicable Disease – Property Damage Coverage

103. The actual presence of COVID-19 at the Covered Property caused physical loss or damage to it. This resulted in orders by authorized governmental agencies which regulate communicable disease.

104. This triggered coverage under the AFM Policy's Communicable Disease – Property Damage Coverage, so Plaintiff should be compensated for its losses.

105. People who tested positive for COVID-19 entered into parts of the Covered Property.

h. AFM Should Compensate Plaintiff for its Losses Because COVID-19 Triggered the AFM Policy's Communicable Disease – Business Interruption Coverage

106. The actual presence of COVID-19 in the state of Illinois, Cook County, and Lake County has resulted in state and county orders by those authorized to regulate communicable disease.

107. The business interruption losses suffered by Plaintiff because of the civil authority orders due to the actual presence of COVID-19 at the Covered Property conferred coverage to Plaintiff under the Policy's Communicable Disease – Business Interruption Coverage.

i. AFM Should Compensate Plaintiff for its Losses Because COVID-19 Triggered the Policy's Supply Chain Coverage

108. COVID-19 has caused direct physical loss or damage of the type insured at the premises of the Plaintiff's direct customers and direct contract service providers, as well as the direct and indirect suppliers, customers, and contact service providers of Plaintiff's direct customers and direct service providers.

109. Plaintiff has lost business income due to the supply chain interruptions.

110. These losses triggered coverage under the Policy's supply chain coverage.

j. AFM Should Compensate Plaintiff for its Losses Because COVID-19 Triggered the Policy's Rental Income Coverage

111. The Policy also provides coverage for rental value loss and/or rental income loss due to direct physical loss or damage by a covered cause of loss to Covered Property held for rental to others at a covered location.

112. Plaintiff suffered and continues to suffer rental value loss and/or rental income loss of the same type as described above with respect to Covered Property held for rental to others at a covered location.

3. No Exclusion Applies Which Affects Coverage

113. The Policy contains no exclusion which limits or bars coverage for the actual presence of COVID-19 or the threat created by that presence at and near the Covered Property, the physical loss and damage to the Covered Property, and/or the business interruption losses which

have resulted and will continue to result from the physical loss and damage to the Covered Property.

114. In fact, the Policy specifically covers business interruption losses due to the “actual not suspected presence of communicable disease.”

115. To the extent the Court finds that any exclusion(s) apply, they are unenforceable.

4. The Policy’s Contamination Exclusion Does Not Apply

116. Although the Policy includes a so-called “contamination exclusion,” this exclusion does not apply to Plaintiff’s claim, and it does not exclude coverage related to *business interruption* losses.

117. The Policy’s “Communicable Disease – Property Damage” coverage provides for, among other things, “the reasonable and necessary costs incurred by the Insured at such described location for the: a) cleanup, removal and disposal of . . . communicable disease from insured property[.]” Exhibit 1 at pg. 27.

118. The Policy contains an exclusion that purports to preclude coverage for “contamination.” *See id.* at pg. 25.

119. The purported “contamination” exclusion does not exclude coverage for loss caused by “communicable disease,” which is in fact expressly covered. *See id.*

120. The Policy’s “**contamination**” exclusion does not exclude coverage for *business interruption* losses.

121. The Policy has three types of exclusions: Group I, Group II, and Group III. *See* Exhibit 1 at pg. 22-25.

122. The contamination exclusion is a Group III exclusion in the Policy.

123. Group I exclusions specifically exclude coverage for business interruption losses caused by a particular risk of loss, such as nuclear reaction, war, and rebellion. Group I exclusions do so by stating specifically in its prefatory phrase that “This Policy excludes *loss or damage directly or indirectly caused by or resulting from any of the following . . .*”

124. Group II and III exclusions, however, do not exclude business interruption losses. Again, the contamination exclusion falls under Group III. The prefatory language to those two groups of exclusions does not state explicitly or otherwise that they are excluding loss. Instead, the two groups of exclusions exclude particular *conditions*, rather than seeking to exclude any loss or damage arising from a particular cause.

125. The contamination exclusion itself excludes not losses resulting from contamination, but, at most, costs to remedy contamination and, in particular, the cost to decontaminate and the cost to use other non-contaminated space.

126. If AFM should contend that the purported “contamination” exclusion prohibits coverage for loss caused by “communicable disease” (or any other aspect of Plaintiff’s claim), the Policy is ambiguous, and therefore, must be construed in favor of coverage. *See Textron, Inc. v. Aetna Cas. & Sur. Co.*, 754 A.2d 742, 756 (R.I. 2000) (holding that the word “sudden” within the “sudden and accidental” exception to the pollution exclusion was ambiguous and therefore construed against the drafter); *Dutchman Dental LLC v. The Providence Mut. Fire Ins. Co.*, No. KC-2016-1281, 2020 WL 1275581, at *5 (R.I. Super. Mar. 11, 2020) (“As the insurer, Defendant has the ability to change the language in its Policy or move the pollution exclusion into section B(1). However, because it has not done so, the ambiguity created is held strictly against the insurer, and this Court finds that the lack of such language in section B(2) allows for coverage where there is a concurrent covered risk.”).

5. The Policy’s Communicable Disease Additional Coverages’ Sublimits Do Not Restrict Plaintiff’s Recovery

127. Under the Policy, in addition to the general all-risks coverage, AFM must cover Plaintiff for the actual presence of “communicable disease” at Plaintiff’s properties under two sections of the policy titled “Communicable Disease – Property Damage” and “Communicable Disease – Business Interruption” (collectively, “Communicable Disease Additional Coverages”) for which the Plaintiff specifically purchased insurance. Plaintiff purchased these Communicable Disease Additional Coverages as additional coverages.

128. Even in the Policy, these Communicable Disease Additional Coverages are denoted as Additional Coverages or Coverage Extensions and do not purport to reduce other coverages available under the Policy. They were sold simply as *additions* to the Policy.

129. Any notion that Plaintiff would purchase Additional Coverages to *reduce* other coverages is illogical. Plaintiff purchased the additional coverages for the “additional coverage.”

130. Other coverages under the Policy that might also apply to loss or damage from or caused by virus, the threat of virus, or communicable disease or the threat of communicable disease, are not impacted by the Communicable Disease Additional Coverages. Further, any sublimits applicable to the Communicable Disease Additional Coverages do not apply to limit the Policy’s other coverages that may apply to physical loss or damage to the Covered Property.

E. Defendant’s Bad Faith Conduct

131. As demonstrated in detail below, AFM has engaged in bad-faith conduct by: (1) predetermining that it would not cover Plaintiff’s (or any insureds’) business interruption/time element claims related to COVID-19 even prior to conducting any investigation, as unearthed in an internal memo circulated to adjusters at AFM, and (2) developing a scheme to make Plaintiff believe that only the Communicable Disease Additional Coverages (with their sublimits) apply, if

at all, to Plaintiff's claim. Defendant AFM also further engaged in bad faith conduct by conducting an onerous pretextual "investigation" (though they had already predetermined there is no business interruption/time element coverage) for over eleven months.

132. Despite its knowledge that the Policy covers Plaintiff's losses beyond simply the Communicable Disease Additional Coverages sublimit amounts, AFM concocted a plan to steer its policyholders into, at most, its sublimits for the interruption by communicable disease and communicable disease response.

133. Plaintiff submitted its claim for coverage under the AFM Policy on August 21, 2020, and Plaintiff's counsel confirmed Plaintiff's claim on November 20, 2020.

134. The initial adjuster for AFM, Brian Reid, and Plaintiff's counsel continued to correspond by email and letter. After AFM's adjuster sent the first Request for Information ("RFI"), Plaintiff compiled all the necessary information, including numerous pieces of information and certain documents issued by the state or city that AFM knows are not required by the Policy, and submitted its full response to AFM on January 29, 2021. AFM subsequently sent its second RFI, which Plaintiff responded to, along with providing additional supporting documents, on March 11, 2021.

135. Without notice, the adjuster did not respond for approximately one month despite Plaintiff's counsel's multiple attempts to contact the adjuster for a follow-up on AFM's coverage determination. Nearly one month later, on or about April 9, 2021, AFM's adjuster informed Plaintiff's counsel for the first time that Plaintiff's claim was transferred to a new adjuster but failed to provide the name or contact information of the new adjuster.

136. Approximately one week later, on April 16, 2021, the new adjuster, Eric Scott, contacted Plaintiff's counsel regarding Plaintiff's claim and sent AFM's third RFI. However,

Plaintiff had already provided some of the information and supporting documents in its response to AFM's first RFI almost four (4) months prior, on January 29, 2021. On June 7, 2021, AFM issued its coverage letter, which admitted coverage for only a sublimit of \$100,000 for Communicable Disease-Property Damage and a sublimit of \$100,000 annual aggregate for Communicable Disease-Business Interruption for a *part* of the insured Covered Property. *See* Exhibit 2, AFM's Coverage Letter. Embedded in its coverage letter was AFM's fourth RFI, to which Plaintiff submitted its response with additional invoices. *See id.*

137. Subsequently, AFM sent its fifth RFI on August 30, 2021, nearly eight (8) months after its first RFI. Despite this being the fifth RFI, Plaintiff still provided detailed responses and supplemental documents to AFM's fifth RFI. On October 22, 2021, AFM sent yet another RFI—its sixth one—to Plaintiff, demanding more financial documents. By then, Plaintiff and AFM had engaged in the RFI process for approximately ten (10) months without any coverage determination for the Covered Property as a whole. When Plaintiff's counsel requested that AFM send a “full list of documents” it needed, AFM refused to do so and continued to demand the same few pieces of information and documents from its sixth RFI in December of 2021.

138. Ultimately, Plaintiff did not provide responses specifically to AFM's sixth RFI, as Plaintiff's efforts would have been futile. Even if Plaintiff had provided the requested information and documents, AFM would have continued to demand further information and documents and drag out the RFI process—as AFM had done since January 2021—or alternatively, Plaintiff would have received at most, its sublimits for the interruption by communicable disease and communicable disease response for one section of the Covered Property—a negligible portion of Plaintiff's claim for policy limits covered under the AFM policy.

139. AFM sent its requests for information on a piecemeal basis, spanning approximately eleven (11) months. Despite Plaintiff's exhaustive responses, which already demonstrated that Plaintiff was entitled to coverage under the AFM policy, AFM's adjuster stated that AFM had "not received proper supporting documentation" from Plaintiff. Each time Plaintiff sent information responsive to AFM's requests, AFM moved the goal posts and requested more and more information, claiming such requests were part of an effort to determine its coverage position.

140. In reality, as evidenced by AFM's internal memo discussed in detail below, prior to the Request for Information process, AFM had already incorrectly and in bad faith pre-determined its coverage position—namely, that there is no coverage for Plaintiff's (or any other insureds') business interruption/time element losses.

141. For example, although Plaintiff submitted conclusive proof of an accounting of COVID-19 cleaning costs through December 1, 2020, a list of employees who tested positive for COVID-19 with information as to when those employees first exhibited symptoms of COVID-19 and their last known location on Plaintiff's Covered Property, and numerous orders issued by the state of Illinois and the city of Chicago, that information, astonishingly, was still not enough to satisfy AFM.

142. Plaintiff also submitted information related to test reports from individuals/employees who tested positive for COVID-19, excerpts of Plaintiff's agreement regarding cleaning and maintenance responsibilities on the Covered Property, and updated COVID-19 cleaning costs. Despite providing all this information and supporting documents to AFM, AFM's adjusters continued to request more information, specifically concerning the earliest date that a positive COVID-19 test result was confirmed on or at the Covered Property and positive COVID-19 testing results. Plaintiff even supplemented its response to include an additional letter

from a vendor whose employee was onsite at Plaintiff's Covered Property prior to testing positive for COVID-19. But, pursuant to AFM's own unearthed internal memo (described in detail below), by providing just the test result of an infected employee, Plaintiff provided all that AFM admittedly needed to provide coverage.

143. On June 7, 2021, AFM issued its coverage letter, which admitted coverage for only a sublimit of \$100,000 for Communicable Disease-Property Damage and a sublimit of \$100,000 annual aggregate for Communicable Disease-Business Interruption. *See* Exhibit 2, AFM's Coverage Letter. However, AFM only assessed sublimit coverage for a *part* of the Covered Property. *See id.* In its coverage letter, AFM requested more information and supporting documentation, claiming "[AFM] will be in a position to proceed with the adjustment of the loss" for the remaining portion of the Covered Property that was insured under the same Policy. *See id.* This was the fourth RFI from AFM, more than five (5) months after Plaintiff submitted its response to AFM's first RFI in January 2021. Despite this, Plaintiff submitted its response to AFM's fourth RFI with additional invoices.

144. Subsequently, AFM sent its fifth RFI on August 30, 2021, and its sixth RFI on October 22, 2021. Plaintiff provided detailed responses and additional invoices to AFM's fifth RFI; however, it did not respond to AFM's sixth RFI. As explained above, by AFM's sixth RFI, Plaintiff and AFM had engaged in the RFI process for approximately eleven (11) months without any coverage determination for the insured Property as a whole. Despite Plaintiff's exhaustive responses, AFM's adjuster requested even further information in its fifth and sixth RFI's, which are completely unnecessary as Plaintiff's submitted responses already demonstrate that it is entitled to coverage under the AFM policy. Therefore, even if Plaintiff had provided the information and documents requested by AFM in its sixth RFI's, Plaintiff's efforts would have

been futile because AFM would have continued to demand further information and documents and drag out the RFI process, or alternatively, Plaintiff would have received at most, its sublimits for the interruption by communicable disease and communicable disease response for one section of the insured Property—a negligible portion of Plaintiff’s claim for policy limits covered under the AFM policy. In utter bad faith, AFM toyed with Plaintiff for almost a year through the sham RFI process, causing great strain on Plaintiff. Even after Plaintiff complied with AFM’s multiple requests, AFM shockingly never even provided at a minimum, either of the sublimits—which AFM confirmed in June of 2021—to Plaintiff. As such, Plaintiff has suffered, is suffering, and continues to suffer substantial damages due to AFM’s bad faith conduct.

145. AFM’s systemic practice and procedure is detailed in AFM’s internal memo entitled “Talking Points on the Novel 2019 Coronavirus.” *See* Exhibit 3, Talking Points.

146. Interestingly, the Talking Points specifically admit that an employee affected with a communicable disease at the covered property would be considered to be the “actual presence” of communicable disease if it is confirmed that the employee actually has the communicable disease and that the presence of the communicable disease was the basis for the decision to limit access to the covered property. *See* Exhibit 3, Talking Points.

147. Yet despite this admission, and the fact that Plaintiff had provided proof of “actual presence” of COVID-19 at its Covered Property, AFM acted in bad faith for months and demanded even more information from Plaintiff before AFM gave its position on coverage for only a part of the Covered Property in June 2021, which it had already pre-determined to be a denial for Plaintiff’s entire claim. Thus, based on information and belief and on the Talking Points, AFM is in fact engaged in a calculated scheme to deny Plaintiff’s and its other insureds’ similar COVID-19 related claims.

148. AFM has also acted in bad faith by developing a practice and procedural scheme to steer its policyholders into thinking only the Communicable Disease Additional Coverages (with their sublimits) apply, not the total coverages under the “all risks” Policy that actually, in fact, apply. But again, as explained in detail above, these sublimits are simply part of the *additional* coverages, and do not represent the totality of coverage.

149. The Talking Points memo reflects AFM’s scheme to limit coverage to the Communicable Disease Additional Coverages incorrectly and in bad faith.

150. The Talking Points memo incorrectly and in a conclusory fashion states that the Policy’s coverages for Civil or Military Authority, Supply Chain, and Ingress/Egress do not apply for the same reasons. *See* Exhibit 3, Talking Points. But the conclusory Talking Points memo is incorrect, as the language of the Policy clearly shows that total coverage is available to Plaintiff due to the physical loss and damage caused by COVID-19.

151. AFM’s inclusion of only the Communicable Disease Additional Coverages in its Talking Points causes its adjusters to request information tied only to the Communicable Disease Additional Coverages.

152. In the face of AFM’s bad faith coverage position, the Policy explicitly acknowledges that the presence of communicable disease causes physical damage to property because it provides coverage for the resulting “cleanup, removal and disposal of . . . communicable disease.” Exhibit 1, Policy at pg. 27.

153. The Talking Points memo constitutes a deceitful effort by AFM to maneuver the investigation and impending decision on coverage to only the Communicable Disease Additional Coverages—and that is exactly what happened here.

154. AFM's reliance on the Talking Points, plus its other conduct in requiring onerous prerequisites to coverage that it knew were not required by the Policy and were unreasonable, amount to a positive and unconditional refusal to honor the contract AFM entered into with Plaintiff.

155. The Talking Points memo instructs claims adjusters to reach conclusions without considering the specific facts related to an insured's particular claim, and without considering the applicable law which controls the insurance policy's interpretation.

156. To the extent that the Court or fact-finder interprets the Policy to require Plaintiff to complete any conditions precedent for coverage and performance under the Policy, AFM's sham claims "investigation" constitutes material breach, excusing any alleged failure (if any) by Plaintiff to complete conditions precedent.

157. Plaintiff has complied with the Requirements in Case of Loss provision in the Policy. Plaintiff has submitted a Sworn Proof of Loss. To the extent the Court or fact-finder interprets the Policy to require additional compliance, AFM's sham claims "investigation" constitutes material breach, excusing any alleged failure (if any) by Plaintiff to comply with all requirements.

158. Plaintiff has attempted to mitigate its losses.

159. Therefore, due to the actual spread or presence of COVID-19, Plaintiff has suffered, is suffering, and continues to suffer substantial damages due to AFM's bad faith conduct and breach of contract.

160. Plaintiff's damages include, but are not limited to, the reduction of revenue and income related to the cancellation and/or indefinite postponements of sporting games and other events. Plaintiff's damages further include, but are not limited to, the reduction of revenue and income related to: the fact that the Chicago Bears were required to have home games with no fans

for the entire 2020 season; the stadium retail stores' and concession stands' lack of sales due to the cancelled events and/or fan-free events in 2020; the cancellation, reduction, or seasonal postponement of brand sponsorships due to the cancelled and/or fan-free events and games in 2020; and the lack of ability to have sponsor activations and rented out functions at the Training Facility due to the training camp and Training Facility being closed to the public. Plaintiff will continue to suffer damages if other scheduled events and games are cancelled or limited in the future due to COVID-19.

V. CLAIMS ALLEGED

**COUNT I
Declaratory Judgment**

161. Plaintiff incorporates by reference the allegations contained above, as if set out in full herein.

162. Plaintiff seeks the Court's declaration of the parties' rights and duties under the Policy pursuant to Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L § 9-30-2. A justiciable controversy exists between Plaintiff and AFM regarding the availability of coverage under the Policy for Plaintiff's claim.

163. The controversy between Plaintiff and AFM is ripe for judicial review.

164. Therefore, Plaintiff seeks a declaration from this Court that:

- a. The various Policy coverage provisions identified in this Complaint are triggered by Plaintiff's claim;
- b. No Policy exclusion applies to prohibit or limit coverage for Plaintiff's claim; and
- c. The Policy covers Plaintiff's claim.

COUNT II
Breach of Contract

165. Plaintiff incorporates by reference the allegations contained above, as if set out in full herein.

166. The Policy constitutes a valid and existing contract of insurance requiring Defendant AFM to properly compensate Plaintiff for its losses.

167. AFM has breached the contract by failing to compensate Plaintiff for its claim.

168. Plaintiff sustained damages due to the actual physical presence of COVID-19 at the Covered Property, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings and requiring the initial closure of fitness and training facilities and subsequent limitations due to COVID-19, but Defendant AFM has failed to comply with its obligation and has failed to compensate Plaintiff for its claim.

169. Plaintiff is entitled to actual damages as a result of AFM's breach of contract.

170. Plaintiff has been required to retain the services of attorneys to commence this action and is further entitled to attorneys' fees and costs.

COUNT III
Bad Faith – Common Law

171. Plaintiff incorporates by reference the allegations contained above, as if set out in full herein.

172. The acts and omissions of Defendant AFM as complained of in this Complaint, and also yet to be discovered in this matter, constitute bad faith.

173. Plaintiff sustained damages due to the actual physical presence of COVID-19 at the Covered Property, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings and requiring the closure of Plaintiff's Covered

Property due to COVID-19, but Defendant AFM has failed to comply with its obligation to conduct a reasonable, non-pretextual, and good-faith investigation of Plaintiff's claim, and has further failed in bad faith to compensate Plaintiff for its claim.

174. Plaintiff is entitled to actual damages and punitive damages as a result of AFM's bad faith.

175. Plaintiff has been required to retain the services of attorneys to commence this action and is further entitled to attorneys' fees and costs.

COUNT IV
Bad Faith – R.I.G.L. § 9-1-33

176. Plaintiff incorporates by reference the allegations contained above, as if set out in full herein.

177. The acts and omissions of Defendant AFM as complained of in this Complaint, and also yet to be discovered in this matter, constitute bad faith under R.I.G.L. § 9-1-33.

178. Plaintiff sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings and requiring the closure of Plaintiff's facilities due to COVID-19, but Defendant AFM has failed to comply with its obligation and has failed to compensate Plaintiff for its claim.

179. Plaintiff is entitled to compensatory damages and punitive damages as a result of Defendant AFM's bad faith.

180. Plaintiff has been required to retain the services of attorneys to commence this action and is further entitled to attorneys' fees and costs.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against AFM as follows:

- 1) A declaration from this Court that:
 - a. The various coverage provisions identified in this Complaint are triggered by Plaintiff's claim;
 - b. No exclusion in the Policy applies to prohibit or limit coverage for Plaintiff's claim; and
 - c. The Policy covers Plaintiff's claim.
- 2) For actual, special, compensatory, and consequential damages against AFM in an amount to be proved at trial in excess of the minimum jurisdictional limits of this Court;
- 3) For punitive and/or double and/or treble damages due to AFM's intentional bad faith conduct;
- 4) Pre- and post-judgment interest as provided by law;
- 5) An award of attorneys' fees and cost of suit incurred; and
- 6) For such other and further relief as the Court deems proper.

VII. JURY TRIAL DEMANDED

Plaintiff respectfully requests a trial by jury on all issues so triable.

Date: March 8, 2022

Respectfully submitted,

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*Applications for admission *pro hac vice* to be filed